IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3195 OF 2006

Suraj Shankar Nalawde. .. Petitioner.

vs.

Maharashtra State Secondary &
Higher Secondary Education Board. .. Respondent.

Mr. V.S. Kapse for petitioner.
Ms. Deepa Chavan a/w Mr. Kiran Gandhi i/by
M/s. Little & Co. for Respondent no. 1.
Mr. K.R. Belosey, Officiating G.P.
for Respondent No. 2.

..

Coram: J.N. PATEL &,
S.C. DHARMADHIKARI, JJ.
Date: 28th February, 2007.

P.C.

. Rule. Rule made returnable forthwith by consent of parties.

2. Heard the learned counsel for the parties. This petition can be disposed of at the stage of admission itself. The petitioner has approached this

Court by invoking the extra-ordinary jurisdiction of this Court for seeking writ of mandamus against the respondent to declare the result of the petitioner for the examination held in February-March, 2006 and further directing the respondent to allow the school of the petitioner to issue school leaving certificate in order to enable the petitioner to continue his studies. It is the case of the petitioner that the petitioner appeared for the secondary school certificate examination for the academic year June 2005 to March 2006 conducted by respondent no. 1. The grievance of the petitioner is in respect of his attempt made in the paper of English language. According to the petitioner on 9.3.2006 he appeared for the paper in English language. After the examination was over, the petitioner was given a show cause notice by the respondent alleging that page nos. 13 and 14 of the answer sheet of the paper of English Language was tarred off. An enquiry was conducted in the matter and after the conclusion of the enquiry, the petitioner was found guilty of tampering with the answer sheet as a result of which punishment was recommended of debarring him from appearing in October, 2006 examination.

3. The respondents have filed their affidavit in reply through Sou. Ujjawaladevi V. Patil, Divisional Secretary of the Kolhapur Divisional Board of Respondent No. 1 and it has been contended that during the examination of the answer book of the paper in

English language it was found that sheet nos. 13 and 14 of the answer book was torn off and that created suspicion in the minds of the authorities and enquiry was initiated in which in addition to giving an opportunity to the petitioner, all persons related to the conduct of the examination of paper were examined and the enquiry officer held that the petitioner student was guilty of misconduct/ malpractice and recommended awarding of punishment in accordance with item no. 17 of the Schedule of punishment. The said report was then placed before the Standing Committee which accepted the enquiry officer's report. According to the respondents, after the standing committee resolved to accept the enquiry officer's report and passed resolution, a notification dated 11.8.2006 was issued and the petitioner was accordingly informed of the punishment and, therefore, it is the case of the petitioner that the petitioner has been punished with cancellation of the paper of the said examination and debarring him from appearing in the next examination to be conducted in October, 2006.

4. The learned counsel appearing for the petitioner submits that the petitioner at this stage restricts his petition only for seeking a writ of mandamus directing the respondent for declaring his results and does not propose to go into the merits of the case. It is submitted that technically speaking it may be true that the petitioner has indulged in unfair

means by tearing off page nos. 13 and 14 (which is factually a single page within the answer book of English paper) but that by itself does not indicate the complicity of the petitioner of having adopted unfair means or malpractice in his examination.

5. The learned counsel for the respondents submitted that as the decision taken by the respondent is in accordance with the rules and the prescribed procedure, this Court may refrain from interfering with the decision of the respondent and placed reliance on the various judgments of this Court as well as the Supreme Court in the matter that this Court in its writ jurisdiction cannot sit over the decision of the enquiry committee of the respondent Board as an appellate authority. One such decision is relating to the case of **Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi and others, reported in (1991) 2 SCC 716.**

6. We have given our anxious consideration to the case at hand and find that the petitioner has been punished for having destroyed his answer book of English paper as contended by the respondent. To be appropriate it can at the most be said that the petitioner tampered with the answer book rather than destroying it by removing one page of the answer sheet. The learned counsel for the respondent Board was kind enough to place the answer sheet before this Court. We

have examined the same. We are of the view that merely by removing one of the pages of the answer sheet is not sufficient to draw an adverse inference against the petitioner that in all probability the petitioner has indulged in unfair means or mal-practice in his examination. Further, it is not the case of the respondent Board that there was negative assessment of the answers which could have been probably one of the reasons for removing the page from the answer book for which an adverse inference was required to be drawn.

7. We do not want to analyse the case further in larger interest of the student community by recording any finding which may affect the interest of the petitioner or result in adverse remarks against the respondent particularly in view of the statement made by the learned counsel for the petitioner that the petitioner is restricting the relief sought in the petition only for getting his result declared. We find that factually the petitioner has already suffered the punishment. Now to call the petitioner to reappear for the SSC examination would be unjust and improper in the given facts and circumstances. Therefore, we dispose of the petition with the direction to the respondent Board to declare the result of the petitioner within one week.

8. Needless to say that on declaration of the result, the school will issue the school leaving

certificate to the petitioner to enable him to prosecute his further academic career. The learned counsel for the respondent submits that the respondent would permit the petitioner to withdraw the application form for examination which has been filled by him to appear for the SSC examination to be held in March, 2007. We further make it clear that our decision should not be considered as precedent due to the peculiar facts and circumstances of the case on the basis of which we have granted limited relief to the petitioner. The Petition stands disposed of accordingly.

9. Before we part with this petition, we appreciate the co-operation given to this Court by the learned counsel appearing for the parties in the interest of the students.

10. Rule made absolute accordingly. No order as to costs.

(J.N. Patel, J.)

(S.C. Dharmadhikari, J.)